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09/989,965	11/21/2001	Philip G. Martin	56732US002	1669

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EXAMINER	
MITCHELL, TEENA KAY	
ART UNIT	**PAPER NUMBER**
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Please find below and/or attached an Office communication concerning this application or proceeding.

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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 09/989,965
Filing Date: November 21, 2001
Appellant(s): MARTIN ET AL.

Karl G. Hanson
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 5/10/04

(1) Real Party in Interest

A statement identifying the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) Status of Claims

The statement of the status of the claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Invention

The summary of invention contained in the brief is correct.

(6) Issues

The appellant's statement of the issues in the brief is substantially correct. The changes are as follows: Please note with respect to issue 2, the examiner hereby withdraws the 35 USC 112 second paragraph rejection of claims 1 and 45 based on persuasive arguments of appellant; with respect to issue 3, the examiner hereby withdraws the 35 USC 112 rejection of claims 71-78 based on persuasive arguments of appellant; with respect to issue 5, the examiner hereby withdraws the 103 rejection of claims 1-9, 11-52, 54-84, and 93-98 based on persuasive arguments of appellant and the use of the valve in a filtering face mask; while the 103 rejection of claims 93 and 94

has been withdrawn claims 93 and 94 would now be objected to because they depend from rejected claims 89 and 91.

(7) Grouping of Claims

Appellant's brief includes a statement that claims 1, 45, and 95-98 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

(8) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

5,355,910	GIES et.al.	10-1994

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 85-92 are rejected under 35 U.S.C. 102(b). This rejection is set forth in a prior Office Action, mailed on 12/10/03.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> **A person shall be entitled to a patent unless –**
>
> **(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.**

Claims 85-92 are rejected under 35 U.S.C. 102(b) as being anticipated by Gies et.al. (US 5,355,910).

As to claim 85, Gies discloses a valve seat (20) comprising a seal surface and an orifice through which a fluid may pass (see Fig. 2), and a flexible flap (22) mounted to the valve seat that is fully capable of such that the flap makes contact with the seat when the valve is in a closed position and such the flap can flex away from the seal surface when an exhale flow stream passes through the valve, the flexible flap comprising at least a first and second juxtaposed layers (24 & 40 respectively) wherein one of the layers is stiffer than the other (See abstract).

As to claim 86, Gies discloses wherein the first layer (24) is disposed closer to the seal surface than the second layer when the valve is closed and wherein the second layer (40) is stiffer than the first layer (24).

As to claim 87, Gies discloses a valve seat (20) comprising a seal surface and an orifice through which a fluid may pass (fig. 2), and a flexible flap (22) mounted to the valve seat that is fully capable such that the flap makes contact with the seat when the valve is in a closed position and such that the flap can flex away from the seal surface when an exhale flow stream passes through the valve, the flexible flap (22) comprising at least a first and second juxtaposed layers (24 & 40 respectively) wherein one of the layers has a greater modulus of elasticity than the other (See abstract).

As to claim 88, Gies discloses the first layer (24) is disposed closer to the seal surface than the second layer when the valve is closed and wherein the second layer (40) has a greater modulus of elasticity than the first layer.

As to claim 89, Gies discloses a valve having a valve seat (20) comprising a seal surface and an orifice through which a fluid may pass (see fig. 2), and a flexible

flap (22) mounted to the valve seat that is fully capable such that the flap makes contact with the seat when the valve is in a closed position and such that the flap can flex away from the seal surface when an inhale flow stream passes through the valve the flexible comprising at least a first and second juxtaposed layers (24 & 40 respectively) wherein one of the layers is stiffer than the other (See abstract).

As to claim 90, Gies discloses the first layer (24) is disposed closer to the seal surface than the second layer when the valve is closed and wherein the second layer (40) is stiffer than the first layer.

As to claim 91, Gies discloses a valve having a valve seat (20) comprising a seal surface and an orifice through which a fluid may pass (see fig. 2), and a flexible flap (22) mounted to the valve seat that is fully capable such that the flap makes contact with the seat when the valve is in a closed position and such that the flap can flex away from the seal surface when an inhale flow stream passes through the valve, the flexible flap comprising at least a first and second juxtaposed layers (24 & 40 respectively) wherein one of the layers has a greater modulus of elasticity than the other (See abstract)

As to claim 92, Gies discloses the first layer (24) is disposed closer to the seal surface than the second layer when the valve is closed and wherein the second layer (40) has a greater modulus of elasticity than the first layer.

(11) Response to Argument

In response to Appellant's arguments with respect to Issue 1, the examiner makes note of the authorization to delete the word "preferably" from claims 57 and 58.

In response to Appellant's arguments with respect to Issues 2 and 3, the examiner has removed the 35 USC 112 rejections, thereby rendering these issues moot.

In response to Appellant's arguments with respect to issue 4, Appellant contends that the examiner ignored the preamble limitations. In Appellant's specification the valve of the invention is defined as "a valve that opens to allow a fluid to exit a filtering face mask's interior gas space." The body of the claims do not recite any structure of a filtering face mask and therefore the preamble does not provide life and meaning to the claims. The valve of Gies discloses all the structural limitations of the claims and therefore the rejection of Gies is proper. For the above reasons, it is believed that the 102 rejections should be sustained.

In response to Appellant' arguments with respect to issue 5, the examiner has removed the 35 USC 103 rejections, thereby rendering this issue moot.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Teena Mitchell
Examiner
Art Unit 3743

tkm
September 29, 2004

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